

1 SCOTT JOHNSON,

2 Plaintiff,

3 v.

4 CIHAN AKKAYA, et al.,

5 Defendants.

6 Case No. 21-cv-04198-JST

7 **ORDER TO SHOW CAUSE**8
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12 On June 2, 2021, Plaintiff Scott Johnson filed this action against Defendants Cihan and
13 Serife Akkaya, alleging violations of the Americans with Disabilities Act (“ADA”) and
14 California’s Unruh Civil Rights Act (“Unruh Act”) in relation to a business called “John’s
15 Creation” located in San Carlos, California.¹ ECF No. 1. On January 30, 2023, the Court granted
16 leave to file an amended complaint. ECF Nos. 34, 28-4 (proposed amended complaint). Plaintiff
17 seeks injunctive relief under the ADA and the Unruh Act, statutory damages under the Unruh Act,
18 and attorney’s fees and costs. ECF No. 28-4 at 9. Plaintiff contends that this Court has federal
19 question jurisdiction over the ADA claim and supplemental jurisdiction over the Unruh Act and
20 other state law claims. *Id.* ¶¶ 5-7.21
22 Supplemental jurisdiction “is a doctrine of discretion, not of plaintiff’s right.” *United Mine*
23 *Workers v. Gibbs*, 383 U.S. 715, 726 (1966). District courts have discretion to decline to exercise
24 supplemental jurisdiction if: “(1) the claim raises a novel or complex issue of State law, (2) the
25 claim substantially predominates over the claim or claims over which the district court has original
26 jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or27
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¹ Although the nature of the business is not identified in the complaint, it is a nail salon. *See* ECF
No. 29 at 2.

1 (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.”
2 28 U.S.C. § 1367(c).

3 Numerous federal district courts across California have declined to exercise supplemental
4 jurisdiction over Unruh Act claims brought alongside ADA claims, citing 28 U.S.C. §§ 1367(c)(2)
5 & (c)(4). *See, e.g., Estrada v. Fiesta III, LLC*, 2020 WL 883477, at *5 (C.D. Cal. Jan. 9, 2020)
6 (declining to exercise supplemental jurisdiction over the plaintiff’s Unruh Act claim because
7 “exceptional circumstances” and “compelling reasons” existed, and stating that the plaintiff may
8 “pursue his Unruh Act claim in state court – the appropriate forum for such claim under these
9 circumstances”); *Langer v. Mobeeus, Inc.*, 2020 WL 641771, at *5 (C.D. Cal. Jan. 2, 2020)
10 (similar); *Langer v. Deddeh*, 2019 WL 4918084, at *2 (S.D. Cal. Oct. 4, 2019) (declining to
11 exercise supplemental jurisdiction because the Unruh Act claim predominated over the ADA
12 claim and the interests of comity and discouraging forum shopping constituted exceptional
13 circumstances); *Theroux v. Oceanside Motel-9, LP*, 2019 WL 4599934, at *2 (S.D. Cal. Sept. 20,
14 2019) (similar); *Langer v. Petras*, 2019 WL 3459107, at *2 (S.D. Cal. July 31, 2019) (similar);
15 *Spikes v. All Pro Auto Repair, Inc.*, 2019 WL 4039664, at *2 (S.D. Cal. Aug. 26, 2019)
16 (dismissing for these reasons various state law claims including claims for violation of the Unruh
17 Act, California Health and Safety Code Section 19955, negligence per se, and negligence);
18 *Rutherford v. Ara Lebanese Grill*, 2019 WL 1057919, at *5 (S.D. Cal. Mar. 6, 2019) (finding that
19 “it would be improper to allow Plaintiff to use the federal court system as a loophole to evade
20 California’s pleading requirements”).

21 This Court recently declined jurisdiction over a plaintiff’s Unruh Act claims in
22 circumstances like those presented here. *Arroyo v. Quach, Inc.*, Case No. 21-cv-08778-JST, ECF
23 No. 21 (N.D. Cal. Apr. 12, 2022). The Court noted that California federal courts have recently
24 experienced a large influx of cases involving a federal claim under the ADA for failure to ensure
25 that businesses are accessible to customers with disabilities, accompanied by a state-law claim
26 under the Unruh Act, which provides statutory damages for the same conduct. The Court noted
27 that the Ninth Circuit had tied this increase in filings largely to California’s recent decision to
28 impose “additional procedural requirements on construction-related accessibility claims” in order

1 to “balance its objectives of allowing monetary relief, avoiding undue burdens on businesses, and
2 realigning undesirable incentives for plaintiffs.” *Arroyo v. Rosas*, 19 F.4th 1202, 1207, 1213 (9th
3 Cir. 2021) (internal quotation marks omitted). The Court continued:

4 The comparative ease of filing these cases in federal courts “has
5 created an end-run around California’s requirements,” because
6 heightened procedural requirements generally do not extend to cases
7 filed in federal courts. *Id.* at 1213 (cleaned up); *see also Castillo-*
8 Antonio v. Hernandez, No. 19-cv-00672-JCS, 2019 WL 2716289
9 (N.D. Cal. June 28, 2019) (“As district courts within the Ninth
10 Circuit have repeatedly held, state pleading requirements for
11 disability discrimination claims do not apply in federal court
12 because such requirements are procedural in nature and federal
13 courts use federal procedural rules.”). This shift “threatens to
14 substantially thwart California’s carefully crafted reforms in this
15 area and to deprive the state courts of their critical role in
16 effectuating the policies underlying those reforms.” *Arroyo*, 19
17 F.4th at 1213.

18 As the Ninth Circuit recognized, this situation presents “extraordinary circumstances” within the
19 meaning of § 1367(c)(4). *Id.* at 1214. The Court in *Quach* found the same “extraordinary
20 circumstances,” and then determined, after considering economy, convenience, fairness, and
21 comity, that there were compelling reasons to decline supplemental jurisdiction.

22 This case presents the same considerations that were present in *Quach* and numerous
23 similar cases in other California federal courts. Accordingly, the Court now ORDERS Plaintiff to
24 show cause as to why the Court should not decline to exercise supplemental jurisdiction over the
25 Unruh Act claim in the complaint in this case. Plaintiff shall file a response to this order to show
26 cause within 14 days of this order. In the response, Plaintiff shall identify the amount of statutory
27 damages sought in this action. Plaintiff and Plaintiff’s counsel shall also include declarations in
28 their responses which provide all facts necessary for the Court to determine if they satisfy the
definition of a “high-frequency litigant” under California Civil Procedure Code §§ 425.55(b)(1) &
(2). Failure to file a written response will result in dismissal of the complaint.

IT IS SO ORDERED.

Dated: February 3, 2023



JON S. TIGAR
United States District Judge